

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Complaint of the
City and County of San Francisco

Docket No. C2011-2

ORDER DISMISSING COMPLAINT

(Issued May 1, 2012)

I. INTRODUCTION

The City and County of San Francisco (Complainant) alleges, pursuant to 39 U.S.C. § 3662, that single-point mail delivery to residents of single-room occupancy buildings (SROs) in San Francisco violates 39 U.S.C. §§ 401(2) and 403(c).¹ Single-point delivery typically means that a letter carrier leaves a mailbag at a building's desk or door, and building management is responsible for delivering mail to residents. Postal Operations Manual (POM) § 6152 (Mail Addressed to Persons at Hotels, Schools, and Similar Places). This contrasts with centralized delivery by a carrier to individual, locked mail receptacles for a building's residents. POM § 631.45 (Apartment Houses) and § 631.451 (General).

¹ Complaint of the City and County of San Francisco, May 18, 2011, at 16-18 (Complaint).

The Complaint sets forth two claims (Counts). Count 1 seeks a determination that the Postal Service “must comply with POM § 631.45 by delivering the mails to individual, locked mailboxes in SROs in San Francisco meeting the requirements of POM § 631.45, regardless of whether the building is classified as an ‘SRO,’ includes single resident occupancy rooms, or includes the word ‘Hotel’ in the name of the building.” Complaint ¶ 66. Count 2 alleges unreasonable discrimination in violation of section 403(c) based on the Postal Service’s refusal to deliver mail to individual, locked mailboxes at SROs while providing delivery to individual, locked mailboxes in other similar buildings. *Id.* ¶ 68.

On July 29, 2011, the Commission dismissed Count 1, in part, by striking allegations that a local postmaster’s letter interpreting and applying Postal Service regulations was itself an unlawful regulation adopted in contravention of 39 CFR § 211.2(a).²

In this Order, the Commission dismisses the remaining Count 1 claims and Count 2.

II. BACKGROUND

A. Prior Litigation

There is an extensive history concerning the dispute between the parties over the proper mode of delivery the Postal Service may employ when delivering mail to SROs. A brief summary of that history provides useful context to the Complaint in this proceeding.³

In 2006, San Francisco enacted a municipal ordinance requiring owners of SROs to install separate mail receptacles for each residential unit no later than July 30, 2007.

² Order Granting, In Part, Postal Service Motion to Dismiss Count 1, July 29, 2011 (Order No. 779).

³ For a more complete statement of the facts related to this matter, see Summary Judgment Order at 2-5 cited in n.8, *infra*.

Complaint ¶ 22.⁴ The purpose of that ordinance was to compel owners to retrofit SROs in a way that met Postal Service requirements for centralized delivery on the assumption that this would trigger a conversion from single-point delivery to centralized delivery. *Id.* ¶¶ 5, 22, 26.

In December 2008, San Francisco Postmaster Noemi Luna advised the city by letter that, effective January 5, 2009, the Postal Service would no longer deliver mail to individual mail receptacles in SROs. *See id.* ¶ 29.⁵ In that letter, Luna summarized the Postal Service's activities with regard to the ordinance and set forth the Postal Service's interpretation of regulations governing its single-point mail delivery to SROs.

In May 2009, Complainant (and others) filed suit in the United States District Court for the Northern District of California, challenging, on constitutional grounds, the Postal Service's practice of providing single-point delivery to SRO hotels.⁶ Before the Court, Complainant argued, among other things, that the Postal Service's failure to deliver mail to individual locked mailboxes at SRO buildings violated the equal protection clause of the Fifth Amendment, the First Amendment (the right of free speech and freedom of association), as well as the right to privacy.

In November 2009, the Court, in response to a motion filed by the Postal Service, dismissed all but Complainant's constitutional claims.⁷

⁴ *See also* Motion of the United States Postal Service to Stay Proceedings, September 29, 2011, Exhibit 2 at 12 (Motion to Stay).

⁵ Letter to Vivian L. Day, Acting Director, San Francisco Department of Building Inspection from San Francisco Postmaster Noemi Luna, December 18, 2008 (Luna Letter). The Luna Letter, which was attached to the Complaint, indicated that SROs receiving centralized delivery for over 90 days prior to the issuance of the letter would continue to receive centralized delivery. *Id.* at 2.

⁶ *City and County of San Francisco, et al. v. United States Postal Service*, N.D. Cal. (No. C 09-01964), May 5, 2009 (*San Francisco v. USPS*).

⁷ *Id.*; *see also* Order Granting In Part and Denying In Part Defendants' Motion to Dismiss, November 5, 2009. Dismissed were Complainant's claim for a declaratory judgment, claims based on regulatory or statutory grounds, and claims against Postal Service employees in their individual capacities.

Nearly 2 years later, following extensive discovery, the Court granted the Postal Service's motion for summary judgment, finding that "the undisputed facts demonstrate the absence of any constitutional violation."⁸

Both Complainant and the Postal Service recognize the parallels between the Complaint and the proceedings before the District Court. See Complaint ¶ 55; Motion to Stay at 1. The Court's principal findings, as relevant to the Complaint, are that (1) based on its statutory authority to provide efficient and effective nationwide service, the Postal Service's "decision not to provide centralized delivery to SROs is reasonable...." (*id.* at 17); and (2) the use of single-point delivery for SROs does not violate Postal Service POM regulations because the choice of delivery method is rationally based on reducing costs and maintaining operational efficiency. *Id.* at 18-19.

On November 18, 2011, Complainant moved the Court "to delete its findings relating to the requirements of [POM § 631.45] and the Court's ultimate conclusion that "the USPS is not violating its own regulations...."⁹ The Court denied this motion.¹⁰ In doing so, the Court noted the plaintiffs' repeated assertions that the Postal Service's regulatory violations led to discriminatory mail delivery practices. It explained that

Notably, the [Court's Summary Judgment] Order states that '[b]y using single-point delivery for SROs, the USPS is not violating its own regulations,' but this assertion was made in the context of an equal protection rational basis determination. In other words, because plaintiffs repeatedly underscored that the USPS was violating the POM and, thereby, failed to meet the rational basis standard under equal protection analysis, the Court was compelled to address this argument, determining that the language of § 631.45(b) did not mandate the USPS to regard all family hotels as residential apartments.

Id. at 5.

⁸ *Id.*; see also Order Granting Defendant's Motion for Summary Judgment, October 25, 2011, at 1 (Summary Judgment Order).

⁹ Plaintiffs' Rule 59(e) Motion to Alter or Amend the Judgment Granting Motions for Summary Judgment, November 18, 2011.

¹⁰ *San Francisco v. USPS*, Order Denying Plaintiffs' Rule 59(e) Motion to Alter or Amend Judgment, January 6, 2012.

B. Status of Complaint

Left intact by Order No. 779's partial dismissal of Count 1, is the claim that the Postal Service's interpretation of its own regulations is inconsistent with title 39, as well as the claim in Count 2 that the Postal Service's "dissimilar treatment of similar buildings as defined by POM § 631.45" violates section 403(c).¹¹ Order No. 779 at 2, 6-7.

In its Answer, the Postal Service denies, among other things, the applicability of POM § 631.45 to SRO delivery. It asserts that the controlling regulation is POM § 615.2 (Mail Addressed to Persons at Hotels, Schools, and Similar Places).¹²

Following the issuance of the Court's Summary Judgment Order, the Commission requested the parties' views on the implications of the Court's decision on this proceeding.¹³ In its response, Complainant contends the decision has no bearing because it deals with constitutional claims, rather than regulatory claims. It also argues the decision is based on a "clearly erroneous" statement concerning the meaning of POM § 631.451(b), and asserts the Commission is not required to give this reading any deference. Complainant's Response at 1.

In its response, the Postal Service endorses the Commission's policy of encouraging settlement of complaints and reiterates its longstanding settlement offer—to provide delivery of mail to each SRO in a single locked, secure container.¹⁴ It suggests that, given factual and legal issues common to both proceedings, the District Court's dispositive judgment "presents the potential for substantially affecting the Complaint before the Commission." *Id.* at 1-2. Asserting that the factual and legal

¹¹ City and County of San Francisco's Submission in Response to the Commission's November 8, 2011 Order Addressing Status of Complaint, November 21, 2011, at 2 (Complainant's Response).

¹² See Answer of the United States Postal Service, August 8, 2011, ¶ 8 (Answer). Based on what it perceived to be a good faith attempt by the Postal Service to address the concerns giving rise to the dispute between the parties, the Commission stayed action on the Complaint to allow settlement discussions. See Order No. 808, Order Addressing Complaint and Authorizing Settlement Negotiations, August 16, 2011; Order No. 857, Order Granting Extension of Time, September 16, 2011.

¹³ Order Addressing Status of Complaint, November 8, 2011 (Order No. 955).

¹⁴ United States Postal Service Response to PRC Order No. 955, November 21, 2011, at 2-3 (Postal Service Response).

issues presented in both proceedings are patent, the Postal Service offers illustrative procedural alternates that could be pursued. *Id.* at 3-4.

III. COMMISSION ANALYSIS

Complainant filed its Complaint under 39 U.S.C. § 3662(a), which authorizes the filings of complaints by “any interested person”.

(a) In general.—Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

Complainant contends that Postal Service’s actions violate sections 401(2) and 403(c). Its claims are addressed below.

A. Classification of SROs under Postal Regulations (Count 1 Claim)

The surviving Count 1 claim is that the Postal Service has misread and misapplied its own regulations in violation of 39 U.S.C. § 401(2).¹⁵

¹⁵ Order No. 779 at 5; *see also* City and County of San Francisco’s Answer in Opposition to Motion of United States Postal Service for Partial Dismissal of the Complaint, June 15, 2011, at 11-13 (Complainant’s Opposition to Motion). Count 2 involves claims of undue discrimination. To the extent that Count 1 may also raise a claim of undue discrimination, it will be considered in the following section.

For the reasons given below, the Commission rejects Complainant's contentions that the Postal Service has misclassified SROs under its regulations and has unlawfully denied centralized delivery to SROs in San Francisco.¹⁶

Complainant asserts that SROs are covered by POM § 631.451 which, under conditions expressly set forth in that section, provides the general rule for "[d]elivery of mail to individual boxes", or, in other words, for centralized delivery. See Complaint ¶¶ 38, 60. It argues that the Postal Service's refusal to provide mail delivery to individual, locked mailboxes at SROs single-point delivery violates POM § 631.45. *Id.* ¶¶ 8, 66.¹⁷ Complainant seeks declaratory relief in the form of a Commission order directing the Postal Service to comply with POM § 631.45 by delivering mail to individual mailboxes in San Francisco buildings, including SROs, that meet the requirements of POM § 631.45. *Id.* ¶ 66; see also Complainant's Response at 2.

The Postal Service counters by arguing that the controlling regulation is POM § 615.2, which applies to hotels, schools, and similar places. Answer ¶ 8. That regulation provides for single-point delivery. See POM § 615.2. The Postal Service argues that section 631.45, relied upon by Complainant, "has never played any role in decisions affecting Complainant's SRO hotels...." Answer ¶ 50. It asserts further that section 631.45 "is wholly inapplicable to determining the appropriate delivery mode to hotels, including Complainant's SRO hotels." *Id.* ¶ 8. Lastly, the Postal Service argues that Complainant failed to show, as it maintains is required under POM § 631.6

¹⁶ Section 401 enumerates the Postal Service's general powers, including section 401(2), which authorizes it "to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title[.]" 39 U.S.C. § 401(2). Complainant does not appear to contend that, apart from the Luna Letter, adoption of the regulations themselves is inconsistent with title 39. Instead, Complainant asserts that the Postal Service takes the position, allegedly set forth in the Luna Letter, "that POM § 631.45 is not 'necessary in the execution of its functions,' in contravention of 39 U.S.C. 401(2)." Complainant's Opposition to Motion at 13. Because of this and, as noted, the elements of undue discrimination included in Count 1, the Commission must consider in this specific case the Postal Service's interpretation of its regulations to assess whether it unlawfully denied centralized delivery to SROs that are the subject of this Complaint.

¹⁷ Complainant also cites Domestic Mail Manual § 508.1.7.2 based on a statement in the Luna Letter. *Id.* ¶ 41. However, the Count 1 relief Complainant requests relates exclusively to POM § 631.45. *Id.* ¶ 66.

(Conversion of Mode of Delivery), that conversion of San Francisco SROs to another mode of delivery is warranted. *Id.*

Complainant notes that, by its express terms, POM § 631.45, the regulation providing for mail delivery to individual boxes, applies in a “residential building containing apartments or units occupied by different addressees (regardless of whether the building[s] is an apartment house, a family hotel, residential units, or business units in a residential area and regardless of whether the apartments or units are owned or rented)....” Complaint ¶ 37; see also *id.* ¶ 36. Complainant argues that SROs are “residential units” and that they satisfy the requirements for “apartment houses.” *Id.* Complainant concludes that SROs are entitled to mail delivery to individual, locked mail boxes. *Id.* ¶¶ 60-61.

To rebut the Postal Service’s position that SROs are subject to POM § 615.2 (Mail Addressed to Persons at Hotels, Schools, and Similar Places), Complainant argues that references to SROs in common parlance as “hotels”, or the use of the word “hotel” in the names of SROs, does not necessarily establish the applicability of POM § 615.2.

The fact that SROs are often referred to as ‘residential hotels’ or ‘family hotels’ and that many SROs have the word ‘Hotel’ in their names is not indicative of which Postal Service regulation provides the correct guidance for the type of mail delivery the building is to receive. This is recognized by the Postal Regulations themselves, as POM § 615.2 uses the word ‘hotel’ to describe certain buildings that are to receive single-point delivery while POM § 631.451 uses the phrase ‘family hotel’ to describe certain buildings that are to receive centralized delivery.

Id. ¶ 42.

The Commission agrees that neither the reference to SROs as “hotels”, nor the use of the word “hotel” in an SRO’s name, determines which regulatory section applies, POM § 631.451 or POM § 615.2. Both sections use the term “hotel” and either can potentially be applied to an SRO.

Proceeding from this premise, Complainant argues that SROs satisfy every requirement for coverage by POM § 631.451. *Id.* ¶ 37. The conditions for that coverage are that:

- (a) the building contains at least three units, with a common building entrance and a common street address;
- (b) the installation and maintenance of mail receptacles is approved by the Postal Service;
- (c) one mailbox be provided for each apartment; and
- (d) the mailboxes are grouped at a single point readily accessible to the carrier.

Complainant's reading of section 631.451 is flawed. It characterizes (b) above as requiring a building to have "(4) mail receptacles approved by the Postal Service...." *Id.* However, Postal Service approval of the "installation and maintenance of mail receptacles" is significantly different from its approval of "mail receptacles". Whereas, approval of the former would involve consideration of a range of factors affecting delivery service; approval of the latter would be limited to the physical characteristics of the mail receptacle itself. In other words, centralized delivery under section 631.451 requires Postal Service approval beyond the approval of the physical specifications of the mail receptacle, or mailbox, proposed for use in the SRO or other building.

It is not enough to assume, as Complainant does, that by requiring SROs to install individual mailbox receptacles (pursuant to the 2006 ordinance) that they will qualify under section 631.451 as apartment houses and therefore be eligible for centralized delivery. See *id.* ¶¶ 60-61; see also Complainant's Opposition to Motion at 7. An important consequence of the requirement that the Postal Service approve the "installation and maintenance of mail receptacles" is that the right to centralized delivery service does not become automatically available by merely installing a mail receptacle approved by the Postal Service. This point was recognized by the District Court.

What plaintiffs fail to acknowledge, however, is that POM § 631.45 does not mandate the treatment of all family hotels as residential apartments mandated to receive centralized delivery. Rather, the regulation simply states that delivery of mail to individualized boxes in these family hotels is permitted if the “installation and maintenance of [such] mail receptacles is approved by the Postal Service.” POM § 631.451(b). No evidence exists in this record that the USPS approved installation of mail receptacles for the purposes of converting to centralized delivery.

Summary Judgment Order at 19.

In this proceeding, Complainant has failed even to allege Postal Service approval of the installation and maintenance of mail receptacles for centralized delivery at SROs.¹⁸ Without such Postal Service approval, SROs are not eligible for centralized delivery under POM § 361.452.¹⁹

A further problem with Complainant’s assumption that the mere installation of mail receptacles for centralized delivery creates a right to such delivery mode is its failure to account for the requirements of POM § 631.6, which provides, in relevant part, as follows: “*conversion* refers to changing existing mail delivery to a more economical and efficient mode. The key to converting existing deliveries is identifying those deliveries that are most costly to the Postal Service.” (Emphasis in original.) POM § 631.6.

In *San Francisco v. USPS*, the Court concluded “no facts support the conclusion of plaintiffs’ expert that the USPS will lose no money if forced to deliver to 14,000 more delivery points and to create additional routes.” (Footnote omitted.) Summary Judgment Order at 17. In this case, Complainant appears to assume that POM § 631.6

¹⁸ The only approval for such centralized delivery was the approval discussed in the Luna Letter. Luna Letter at 2. The Postal Service has, by means of the Luna Letter, announced that the earlier approval given to several SROs was inconsistent with Postal Service policies. *Id.* The Luna Letter also announced that those SROs who had received centralized delivery for over 90 days prior to the issuance of the letter would continue to receive such centralized delivery. *Id.* Centralized delivery to all other SROs was terminated in accordance with existing POM § 631.7 (Correction of Improper Mode of Delivery). See *id.*

¹⁹ In the following section, the Commission considers whether the Postal Service unduly discriminated against residents of SROs by denying approval of the installation and maintenance of centralized delivery mail receptacles at SROs.

is inapplicable to the changes in delivery which the 2006 ordinance sought to effect. POM § 631.6 cannot, however, be ignored. Instead of alleging or attempting to show that the conversions of SROs to centralized delivery would be “a more economic and efficient mode,” Complainant argues that “it would not be meaningfully more costly” for the Postal Service to provide centralized delivery to SROs. Complaint ¶ 31. Even if this latter assertion were true, it would fail to satisfy POM § 631.6 which limits conversions “to changing existing mail delivery to a more economical and efficient mode.”²⁰

Ultimately, Complainant does not appear to consider the issue of the Postal Service’s costs to be material to its claim, arguing instead that “regardless of any costs associated with providing [SRO] residents centralized delivery, such delivery is required by [POM § 631.45].” Complaint ¶ 31. Because the Commission rejects Complainant’s conclusion that POM § 631.45 requires centralized delivery to SROs, it need not further address whether SRO conversions would satisfy POM § 631.6.²¹

²⁰ In *San Francisco v. USPS*, both the plaintiffs and the Postal Service submitted expert testimony concerning the costs of centralized delivery to SROs. Summary Judgment Order at 16-17. In considering the parties’ relative positions, the Court concluded:

Simply because plaintiffs’ expert states that USPS may not lose as much as \$2 million dollars a year does not operate to defeat defendant’s summary judgment motion. At summary judgment, expert opinions may be analyzed in terms of the sufficiency of factual support or contradictions found in the undisputed factual record. *Id.* (citing *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 242 (1993)). Put simply, no facts supported the conclusion of plaintiffs’ expert that the USPS will lose no money if forced to deliver to 14,000 more delivery points and to create additional routes. (Footnote omitted.)

Id. at 17.

²¹ Even assuming the issue was before the Commission at this phase of the proceeding, its mere assertion would not automatically create a genuine issue of material fact. See *W. Parcel Exp. v. United Parcel Service of America, Inc.*, 65 F. Supp. 2d 1052, 1060 (N.D. Cal. 1998). Inherent differences in the activities required to effect different types of deliveries are well-known to the Commission. Given city delivery carriers’ current productive hourly wage of \$42.47, or approximately 71 cents a minute (Docket No. ACR2011, library reference USPS FY11-7, WS 8), it cannot reasonably be disputed that single-point delivery is less costly to the Postal Service than centralized delivery.

The Commission turns next to consideration of the Postal Service's position that SROs are properly classified under POM § 615.2, not POM § 636.451.²² The Postal Service states that it adopted this practice of treating SROs under section 615.2 "many, many decades ago and in the absence of a basis for converting to another more cost efficient mode those original decisions continue to apply." Answer ¶ 50. It claims that it has adhered to that practice consistently in harmony with both POM § 631.6 (Conversion of Mode of Delivery) and POM § 631.7 (Correction of improper mode of delivery). Pursuant to this latter section, it corrected the erroneously granted San Francisco SRO conversions promptly upon discovery of the error, while grandfathering those where the improper mode of delivery went uncovered for more than 90 days. These exceptions neither represent an affirmative decision by the Postal Service to alter its SRO delivery policy on a permanent basis nor an indication that it is now incorrectly interpreting its regulations. Rather, it demonstrates a consistent reading of its regulations.

The Postal Service's reliance upon POM § 615.2 is buttressed by POM § 631.31 which, the Postal Service contends, "points out the primacy of POM 615 for locations falling within the latter's ambit." *Id.* at ¶ 8. Section 631.31²³ provides as follows: "For all residential areas, except apartment houses, transient mobile or trailer homes, colleges and universities, and *other sites covered under [section] 615*, the delivery options, under the regulations given below, are curbside, sidewalk, or central delivery." (Emphasis added.) The Commission concludes that POM § 615, not POM § 63, governs locations falling within the former's ambit.

Based on the foregoing, the Commission finds that Complainant has failed to allege facts, which, if proven, would demonstrate that the Postal Service has improperly

²² This position was also stated in the Luna Letter as part of the Postal Service's explanation for the decision to terminate centralized delivery to SROs, except those SROs whose centralized delivery service was being grandfathered. Luna Letter at 2.

²³ POM § 631.3 applies to residential housing (except apartment houses and transient mobile or trailer homes).

classified SROs under its regulations and has unlawfully denied centralized delivery to the SROs that are the subject of the Complaint filed in this proceeding.

B. Undue Discrimination (Count 2 Claim)

Count 2 of the Complaint alleges that the Postal Service's refusal to provide centralized delivery to SROs while providing that mode of delivery "in other similar buildings" violates 39 U.S.C. § 403(c). Complaint ¶ 68.²⁴ It bases its claim of unreasonable discrimination among users of the mails "on the Postal Service's dissimilar treatment of similar buildings as defined by POM § 631.45." Complainant's Response at 2-3.

In response to the Complaint, the Postal Service denies all elements of Count 2. Answer ¶¶ 68-69. It sets forth its legal position in response to Order No. 955.

To prevail on Count II, under several judicial and Commission interpretations of 39 U.S.C. § 403(c), Complainant must establish that the Postal Service's policy of single-point delivery to SRO hotels is undue or unreasonable. The District Court considered the reasonableness of single-point delivery to SRO hotels, concluding that the Postal Service's 'decision not to provide centralized delivery to SRO [hotel]s is reasonable' and supported by interests in efficiency, conservation of valuable resources, cost reduction, and maintenance of operational efficiency. Order at 17-20. Thus, the court appears also to have provided an answer to Count II: The policy of single-point delivery to SRO hotels has been assessed as reasonable, so it does not violate 39 U.S.C. § 403(c).

Postal Service Response at 5-6.

To establish its claim of undue discrimination, Complainant would need to establish, at a minimum, that SRO buildings are similarly situated to buildings receiving centralized delivery and that there is no rational or legitimate basis for the Postal Service to deny centralized delivery to SROs while providing that mode of delivery to those similarly situated buildings. In this case, the Commission finds it unnecessary to

²⁴ 39 U.S.C. § 403(c) reads as follows: "In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user."

address whether SROs and apartment houses are, for delivery purposes, similarly situated since even assuming, *arguendo*, that they are, there is a rational basis for the Postal Service's refusal to provide centralized deliveries to SROs.

A series of court cases, not the least of which is *San Francisco v. USPS*, have found that the Postal Service's authority to provide efficient and economic postal services, including delivery services, permits it to differentiate among customers provided that the differences have a rational basis. See, e.g., *San Francisco v. USPS*, *supra*, 17-19; *Egger v. US Postal Service*, 436 F. Supp. 138, 142 (W.D. Va. 1977) (*Egger*); *Currier v. Potter*, 379 F.3d 716 (9th Cir.) 2004 (*Currier*); *Parsons v. U.S. Postal Service*, 380 F.Supp. 815 (D. N.J. 1974), and *Grover City v. U.S. Postal Service*, 391 F.Supp. 982 (C.D. Cal. 1975).

Under the Postal Reorganization Act, as amended, the Postal Service has “as its basic function the obligation to provide postal services to bind the Nation together...[and] provide prompt, reliable, and efficient services to patrons in all areas....” 39 U.S.C. §101(a); see also *id.* § 403(a) (“provide adequate and efficient postal services”). In addition, it is charged with the responsibility of “maintain[ing] an efficient system of...delivery of the mail nationwide.” *Id.* § 403(b)(1). Among its specific powers is to provide for the delivery of mail. *Id.* § 404(a)(1). Pursuant to section 401(2), it has authority “to adopt, amend, and repeal such rules and regulations, not inconsistent with [title 39], as may be necessary in the execution of its functions under [title 39].”

Egger, a closely analogous case, involved different methods of delivery to married and unmarried students in university-owned buildings as well as students in private housing. Married students accompanied by their families living in university-owned buildings received centralized delivery, while unmarried students living in similar university-owned buildings received single-point delivery. In rejecting plaintiffs' claim that the Postal Service's failure to provide them with centralized delivery violated Postal Service regulations, the Court found the Postal Service's interpretation of its regulation “controlling since it is not plainly erroneous or inconsistent with the regulation.” *Egger* 436 F. Supp. at 142. It concluded:

The Postal Service is responsible for the development of nationwide cost-effective delivery policies and must be granted broad rule-making authority. While plaintiff's residence may structurally be identical to an apartment that fact is not determinative and the Postal Service clearly may focus on the broad delivery characteristics of various mail users.

Id.

The Court specifically rejected plaintiffs' claim that the Postal Service's delivery policies violated 39 U.S.C. § 403(c). Plaintiffs claimed that single-point delivery unduly discriminated against them as unmarried students because the Postal Service provided centralized delivery to married students living in university-owned housing and students living in private housing. *Id.* In disposing of this claim, the Court concluded that "the difference in delivery methods to school-owned apartment complexes occupied entirely by unmarried students and those occupied entirely by married students accompanied by their families is rationally related to the achievement of the Postal Service's statutory goal of providing economical and efficient mail delivery." *Id.* at 143.

In *San Francisco v. USPS*, the Court, when considering Complainant's equal protection claim, found that the use of single-point delivery for SROs "did not violat[e] [the Postal Service's] own regulations in the form of the POM..., the [Postal Service] has shown that the challenged classification can 'reasonably be viewed to further the asserted purpose[s]' of reducing costs and maintaining operational efficiency." (Citation omitted.) Summary Judgment Order at 20. In particular, the Court found the Postal Service had presented legitimate reasons for treating SROs as hotels under the POM. It concluded that plaintiffs, which included Complainant, failed to demonstrate that the Postal Service's reasoning lacked "'some footing in the realities' of the classification or that it [was] merely a pretext for impermissible discrimination." (Citation omitted.) *Id.* Therefore, noting that rational basis scrutiny carries a strong presumption of validity and requires avoidance of judging the "'wisdom, fairness or logic'" of the agency's decision, the Court found that the equal protection claim failed. (Citation omitted.) *Id.*; see also *Currier*, 379 F.3d at 732, finding the Postal Service's limitation of general delivery service to main post offices to be "a rational response to the inefficiencies and increased costs that would result from expanding general delivery to branch offices."

The Commission concludes that the Postal Service's actions do not constitute undue discrimination against SRO residents in violation of 39 U.S.C. § 403(c). The differences in mode of delivery to SROs and apartment houses are rationally related to the Postal Service's statutory mandate to provide adequate and efficient postal services, including an efficient system of delivery of mail nationwide. See 39 U.S.C. §§ 101(a), 403(a) and (b)(1); see also *Egger*, 436 F. Supp. at 143. Accordingly, the Commission denies Complainant's Count 2 claims that the Postal Service is unduly discriminating among or granting an undue preference to users of the mails based upon different modes of delivery utilized. Complainant's Count 2 claims are dismissed.

IV. ORDERING PARAGRAPH

It is ordered:

The Commission finds that the claims before it in Complaint of the City and County of San Francisco, Docket No. C2011-2, are not justified, and therefore dismisses the Complaint.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Hammond not participating.